Supreme Court, U.S.
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No. 10-971

In The
Supreme Court of the United States

LATRICE ALSTON WOODARD,

Petitioner,

v.

THE COUNTY OF WILSON and THE WILSON COUNTY DEPARTMET OF SOCIAL SERVICES,

Respondents.

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does an anti-nepotism policy which prohibits non-spousal relatives with no supervisory authority over one another from working in the same department significantly interfere with the right to marry thereby invoking the strict scrutiny standard?

PARTIES

The petitioner is Latrice Alston Woodard.

The respondents are (1) The County of Wilson and (2) The Wilson County Department of Social Services.

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Petitioner Latrice Alston Woodard respectfully prays that this Court grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals entered on August 31, 2010.

OPINIONS BELOW

The August 31, 2010 opinion of the court of appeals which is not officially reported is unofficially reported at 2010 WL 3452467, and is set out at pp. 4a-18a of the Appendix. The November 13, 2008 order of the district court which is not officially reported is set out at p.1a of the Appendix.

STATEMENT OF JURISDICTION

The decision of the court of appeals was entered on August 31, 2010. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The statutes involved are U.S. Const. Amend. XIV, § 1 and N.C. Const. Art. I, § 19.

STATEMENT OF THE CASE

The petitioner, Woodard, began working as a Social Worker for the respondent Wilson County Department of Social Services ("DSS") in 2001. The County of Wilson ("County") has several departments within its auspices, including the DSS. (J.A. 251). Denise Stinagle, the Assistant County Manager for Wilson County since 1998, confirmed that the petitioner was not only an employee of DSS, but was in fact an employee of the county, paid through county funds. (J.A. 246, 248-249; 255).

The County maintained a "Limitation of Employment of Relatives" policy which stated in pertinent part that the employment of immediate family is prohibited within the same department or work unit if such employment will result in one member's supervising the other or in one member's

occupying a position that has influence over the other's employment, promotion, salary administration, and other related management or personnel considerations. (J.A. 257).

In addition, DSS maintained a policy called the "Statement of Relatives Employment" which stated in pertinent part that two members of an immediate family shall not be employed within the same department. (J.A. 259).

James Osbourne, Jr. ("Osbourne"), the Director of the Wilson County Department of Social Services since August 1994, did not know why the "Statement of Relatives" policy was enacted in 1985, and in comparison to the county's policy, DSS's policy is substantially more restrictive.(J.A. 262, 276). Although the county maintained a policy pertaining to relatives' employment, there is no mandate that the DSS have a policy separate and apart from the

county policy. (J.A. 264). In fact, Osbourne could have abolished the DSS policy at his discretion once he came into the directorship. (J.A. 263-264).

Both policies were asserted at the time of Woodard's initial hire as a condition of employment. Between the time Woodard was hired in 2001 and the time she was terminated in 2006, no written documentation was provided to advise her that continued compliance with the policy was a condition of *continued* employment with DSS. (J.A. 262, 266). Moreover, there is nothing written in either policy that indicates that an employee found to be out compliance would be terminated.

At the time the plaintiff became employed with DSS, she was unmarried; however in 2005, she became engaged to Billy Woodard, the son of co-worker, Judy Vaughn. Vaughn worked as a day porter, which was a custodial position, with DSS.

(J.A. 274-275). Like the petitioner, Vaughn was considered a county employee. (J.A. 250). Although the petitioner and Vaughn both worked at DSS, they had no supervisory authority over one another. Likewise, neither had influence over management or personnel considerations for the other. And, Billy Woodard, Vaughn's son, was not employed by DSS. (J.A. 277).

Prior to their marriage, the petitioner and Billy Woodard lived together in Wilson County. However, in 2006, when the petitioner announced her upcoming nuptials, she was advised by Annie Ward, Personnel Manager at DSS, that she would be terminated if she married Vaughn's son. And, in fact when the petitioner married Woodard in July 2006, she was terminated.

It is undisputed that the petitioner was terminated solely because she violated the DSS anti-

nepotism policy. Osbourne admitted that if the petitioner had not married Vaughn's son and continued to cohabitate with him, she would not have been fired. (J.A. 272). It is likewise undisputed that the petitioner did not violate the Wilson County anti-nepotism policy. (J.A. 252). Osbourne determined that the petitioner violated the DSS policy because she initiated the "out of compliance" by marrying Vaughn's son. He later admitted that both the petitioner and Vaughn were equally out of compliance. (J.A. 271). Neither the petitioner nor Vaughn was given the opportunity to transfer to another department, nor were they given an opportunity to elect which of the two would terminate employment. (J.A. 247, 253, 267-269).

REASON FOR GRANTING THE WRIT

TO CLARIFY THE APPLICABLE STANDARD OF REVIEW TO DETERMINE THE CONSTITUTIONALITY OF ANTI-NEPOTISM POLICIES IN THE WORKPLACE WHICH RESULT IN TERMINATION OF EMPLOYMENT WHEN NON-SPOUSAL, NON-SUPERVISORY EMPLOYEES BECOME RELATED BECAUSE OF MARRIAGE.

The United States Supreme Court has made it abundantly clear that the right to marry underlies the purposes of the Constitution, although not mentioned therein, and is a fundamental right afforded protection by the *First, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution. Meyer v. Nebraska,* 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed.2d 1042 (1923); *Skinner v. Oklahoma,* 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); *Loving v. Virginia,* 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967); *Boddie v. Connecticut,* 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971);

Cleveland Board of Education v. LaFleur, 414 U.S. 632, 94 S.Ct. 791, 39 L.Ed.2d 52 (1974); *O'Neill v. Dent,* 364 F.Supp. 565 (E.D.N.Y., 1973). The rule is well established that where a classification impinges upon fundamental freedoms protected by the Constitution, such classification must, under the Equal Protection Clause, not be merely rationally related to a valid public purpose, but necessary to the achievement of a compelling state interest. *Shapiro v. Thompson,* 394 U.S. 618, 89 S.Ct. 1322, 22 l.Ed.2d 600 (1969); *Dunn v. Blumstein,* 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972); *Eisenstadt v. Baird,* 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972).

Under Substantive Due Process, "[n]o State shall . . .deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 1. The U.S. Supreme Court has "recognized that one aspect of liberty protected by

Due Process Clause of the Fourteenth Amendment is a right of personal privacy." *Carey v. Population Services Int'l*, 431 U.S. 678, 684, 52 L. E. 2d 675, 684 (1977) (internal quotations and citations omitted). This protected right of personal privacy includes activities "relating to marriage, procreation, contraception, family relationships, . . . child rearing and education." *In re Truesdall*, 63 N.C. App. 258, 268, 304 S.E.2d 793, 800 (1983), *modified*, 313 N.C. 421, 329 S.E.2d 630 (1985) (citation omitted). N.C. Const. Art. I, § 19. "Where certain fundamental rights are involved, the Court has held that regulation limiting these rights may be justified only by a compelling state interest. . . and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake." *Id.* at 269, 304 S.E.2d at 800 (internal quotes and citation omitted). *In re Johnson*, 45 N.C. App. 649, 652, 263

S.E.2d 805, 808 (1980) ("Procreation, together with marriage and marital privacy, are recognized as fundamental civil rights protected by the due process and equal protection clauses of the Fourteenth Amendment"). The Fourteenth Amendment also protects against arbitrary government action that is so egregious that it "shocks the conscience" or offends a "sense of justice." *U.S. v. Salerno*, 481 U.S. 739, 746, 95 L. Ed. 2d 697, 708 (1987); *County of Sacramento v. Lewis*, 523 U.S. 833, 140 L. Ed. 2d 1043 (1998); *State v. Guice*, 141 N.C. App. 177, 541 S.E.2d 474 (2000).

Some courts have analyzed anti-nepotism policies in the workplace pursuant to the strict scrutiny analysis where the policy has involved spousal and/or supervisory relationships over immediate family members. In 1939, the Supreme Court of Massachusetts considered a proposed

legislative bill which provided in pertinent part that a husband and wife could not at the same time be employed in the service of the commonwealth. That court held that the bill differed from certain other bills of similar nature considered by the Massachusetts Senate and House of Representatives in that it was equally applicable to both married men and women; but pointed out: 'It does discriminate, however, between a particular class of married persons and all other persons married or unmarried, * * *.' *In re Opinion of Justices,* 303 Mass. 631, 22 N.E.2d 49, 123 A.L.R. 199 (1939). Because of the impact the bill had on marriage, the court analyzed it pursuant to the strict scrutiny standard determining that the public good would not be served by denying employment based upon marital status.

Likewise, in *O'Neill v. Dent*, 364 F.Supp. 565 (E.D.N.Y., 1973), the court struck down a regulation

of the Merchant Marine Academy prohibiting cadets at that institution to be married. In that case, the court reiterated the well-established rule that marriage is a fundamental right, and took evidence as to whether the regulations of the academy were necessary to promote a compelling governmental interest. After hearing the evidence, the court concluded that there was no compelling governmental necessity for Merchant Marine Academy regulations prohibiting cadet marriages, and that the interference with the cadet's fundamental right to marry violated the cadet's right to due process.

In *Dennis Viochahoske v. City of Grand Island, Hall County*, 231 N.W.2d 125 (194 Neb.1975), the plaintiff was employed as a mechanic in the department of public works for the City of Grand Island. He married Janice Randolph, who was

employed by the city's police department. Thereafter, the parties were told that one of them would have to resign because they were in violation of the city's personnel rule which stated in pertinent part that changing status, by marriage or otherwise, which would result in more than one person in a household being on patrol of the city would result in termination.

The Supreme Court of Nebraska, in reversing the trial court's summary dismissal of the case, reasoned that the personnel rule established a system of classification which must be examined to determine its validity under the Equal Protection Clause of the United States Constitution. The court, applying the strict scrutiny standard, held that the city's anti-nepotism policy could only be sustained if it established a compelling governmental interest for so doing.

More recently, however, a few courts have analyzed anti-nepotism policies involving spouses with supervisory authority over the other in the workplace using the rational basis approach. In *Wright v. MetroHealth Medical Center,* 58 F.3d 1130 (6th Cir.1995), the Sixth Circuit held that a policy requiring the transfer of one spouse from the airlift unit upon their marriage did not directly and substantially interfere with the fundamental right to marry and, thus, was subject only to rational basis scrutiny and that the nepotism policy was rationally related to furthering legitimate government interest in avoiding conflicts of interest and deterioration of other workers' morale.

In that case, the Plaintiff Martha Sabol Wright had been employed as a registered nurse by the defendant MetroHealth, a public hospital located in Cuyahoga County, Ohio, since October 1984. She

later married Plaintiff John C. Wright, Jr., who had been employed by PHI, a division of MetroHealth, as a helicopter pilot since 1985. In November, 1992, MetroHealth informed the plaintiffs that as a married couple in the same unit, they would be in violation of MetroHealth's nepotism policy and that one of them would have to transfer to another unit. "MetroHealth's nepotism policy states in relevant part as follows:

> *In order to prevent conflicts which may* arise in situations where members of the same immediate family are employed by the Hospital, the Hospital will not allow an individual to be employed, transferred or promoted, where as a result, any of the following situations would exist: ...Members of the same immediate family being in positions which are of such close proximity that they would necessarily interact with each other in the performance of their duties ...If, as a result of a marriage between two employees, a violation of the Nepotism guidelines arises, the affected employees will be given the option of electing which spouse will be moved to another

> position in the Hospital System so as to eliminate the nepotism violation. If no election is made by either spouse in thirty (30) calendar days after notice to the employees, the least senior in terms of Hospital seniority will be moved. All reasonable attempts will be made to insure that the displaced employee is given a position of comparable responsibility and pay."

The court in analyzing the facts of *Wright* deemed the rational basis standard proper in view of this Court's holding in *Zablocki vs. Redhail*, 434 U.S. 374, 98 S.Ct.673, 54 L.Ed.2d 618 (1978).

The Sixth Circuit revisited the issue of anti-nepotism policies in the workplace in *Vaughn vs. Lawrenceburg Power System*, 269 F.3d 703 (6th Cir.2001). Relying again on this Court's holding in *Zablocki*, the Sixth Circuit concluded that because the anti-nepotism policy at issue did not "directly and substantially" affect a large portion of those affected by the rule preventing them from marriage, the

applicable standard of review was rational basis.

The Eleventh Circuit also addressed the issue of anti-nepotism policies in employment in *Parks v. City of Warner Robins,* 43 F.3d 609 (11th Cir.1995). There, the Plaintiff-appellant Brenda Parks was a Sergeant in the Special Investigative Unit of the Warner Robins Police Department, where she had worked since August, 1984. In October, 1989, Parks became engaged to A.J. Mathern, a Captain in the Criminal Investigative Unit of the Warner Robins Police Department. Both held supervisory positions in the police department. Mathern discussed his plans to marry Parks with the Chief of Police for Warner Robins, who informed Mathern that the two would be in violation of Warner Robins' anti-nepotism policy which had been adopted in 1985. The anti-nepotism policy prohibited relatives of city employees in supervisory positions from working in

the same department. Johnson told Mathern that if the two married, the less-senior Parks would have to leave the police department. The Eleventh Circuit held that the anti-nepotism policy applicable to supervisory employees did not deny the fundamental right to marry protected by the due process clause. However, the issue of whether the policy would be analyzed under the rational basis standard if it had been extended to nonsupervisory, non-spousal employees was not addressed by the court.

Likewise, the Fourth Circuit opined that *Waters vs. Gaston County*, 57 F.3d 422 (4th Cir. 1995) stands for the *general* proposition that anti-nepotism policies do not significantly interfere with the right to marry and should be reviewed under the rational basis standard. In *Waters*, both plaintiffs were married paramedics employed by Gaston County. The Gaston County employment restriction allowed

permanent full-time employees who married while both were employed by the county to continue as employees of the county with the stipulation that they were not allowed to supervise one another or work within the same department. The employee would be allowed ninety (90) days to obtain a transfer to other county employment *or* resign. The policy also described neutral methods of determining which employee would be terminated.

The Fourth Circuit in the present case, also applying *Zablocki* reasoned, "Although the WCDSS policy covers more family members than the policy in *Waters*, the reasoning in *Waters* does not depend on the number of people affected by the policy." Yet this reasoning misstates the distinction in the policies. First of all, *Zablocki* discusses strict scrutiny in the context of child custody issues. It does not involve employment and its extension to a workplace anti-

nepotism policy is overreaching.

Waters, like *Wright, Vaughn* and *Parks*, are distinguishable from the present case in that this case involves the implementation and enforcement of an anti-nepotism policy which is extended to a non-spousal, non-supervisory relationship. And, equally important, an anti-nepotism policy that results in termination of employment and conflicts with the dual-employer county's narrowly drawn anti-nepotism policy. There is a *complete bar for any relatives* (not just spouses) from working within the same *agency* according to the DSS policy, but the county's narrowly drawn policy is markedly different.

In *Waters, Wright, Vaughn* and *Parks*, the anti-nepotism policies at issue were flexible and ostensibly astute. Here, no methods were employed to determine options available to non-compliant employees. Neither the petitioner nor Vaughn was

allowed to transfer. Rather, Osbourne demanded that the petitioner must resign or be terminated.

Finally, it is worth noting that the petitioner and Vaughn's son had been engaged and cohabitating for more than a year before they were ultimately married. The petitioner's employment was terminated because of marriage, but was not restricted by cohabitation. Pursuant to NCGS § 14-184, if any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, they shall be guilty of a Class 2 misdemeanor. Hence, DSS's policy essentially encourages criminal activity and conduct deemed immoral and indecent, and discourages the exercise of a fundamental right.

In *Bell V. Lone Oak Independent School Dist.*, 507 S.W.2d 636 (Tex Civ.App., 1974), the Texas Court of Appeals held that a school regulation that

prohibited married students from participating in extracurricular activities violated the equal protection clause. In so holding, the court opined that it was the public policy of the state to promote marriage rather than living together unmarried.

Although, anti-nepotism policies have been deemed constitutional under the rational basis test in the past, it is important not to systematically consider all anti-nepotism policies constitutional. Because the anti-nepotism policy here involves 1) non-spouses, 2) no supervisory relationship, 3) conflict between dual employers, and 4) encourages criminal activity, it is substantially different from the cases previously reviewed by this Court.

The most recent case by this Court discussing the issue of strict scrutiny is the 1978 opinion in *Zablocki*, supra. However *Zablocki* does not address the specific issue of the standard of review of anti-

nepotism policies in the workplace. The courts are therefore left to interpret these policies randomly and with little guidance, thereby reaching inconsistent conclusions.

CONCLUSION

Because this case presents the unanswered question of whether the strict scrutiny standard should be applied to anti-nepotism policies involving termination of employment for non-spousal, non-supervisory employees related by marriage, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Fourth Circuit.

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

No.5:07-CV-6-D

LATRICE ALSTON WOODARD,	)	
	)	
Plaintiff,	)	
v.	)	
	)	**ORDER**
	)	
THE COUNTY OF WILSON, and WILSON COUNTY DEPARTMENT OF SOCIAL SERVICES,	)	
	)	
Defendants.	)	

On November 13, 2008, the court heard oral argument in connection with defendants' motion for summary judgment [D.E. 18]. For the reasons stated in open court (which are incorporated herein by reference), the court GRANTS defendants' motion for summary judgment

SO ORDERED This 13th day of November 2008.

/s/_____
JAMES C. DEVER III
United States District Judge

Minute Entry for proceedings held before Judge James C. Dever III: Hearing held on November 13, 2008 regarding 18 MOTION for Summary Judgment filed by The County of Wilson and Wilson County Department of Social Services. Present for Plaintiff: Angela Newell Gray. Present for Defendants: Mary Craven Adams. Law Clerks: Josh Branscomb and Matt Wolfe. Court Reporter: Donna Tomawski. Defendants' motion for summary judgment is granted. A written order will follow. (Richards, J.) (Entered: 11/13/2008)

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-2366

LATRICE ALSTON WOODARD,

Plaintiff - Appellant,

v.

THE COUNTY OF WILSON; WILSON COUNTY DEPARTMENT OF SOCIAL SERVICES,

Defendants – Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:07-cv-00006-D)

Argued: March 24, 2010 Decided: August 31, 2010

Before MICHAEL and DAVIS, Circuit Judges, and

Eugene E. SILER, Jr., Senior Circuit Judge of the United States Court of Appeals for the Sixth Circuit, sitting by designation.

Affirmed by unpublished per curiam opinion.

ARGUED: Angela Newell Gray, GRAY NEWELL, Greensboro, North Carolina, for Appellant. Mary Craven Adams, WOMBLE, CARLYLE, SANDRIDGE & RICE, PLLC, Winston-Salem, North Carolina, for Appellees. **ON BRIEF:** James R. Morgan, Jr., WOMBLE, CARLYLE, SANDRIDGE & RICE, PLLC, Winston-Salem, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Latrice Alston Woodard, a social worker with the Wilson County Department of Social Services (WCDSS), was dismissed from her employment under WCDSS's anti-nepotism policy after she married the son of a WCDSS day porter. Woodard

sued WCDSS and the County of Wilson, North Carolina, alleging violation of her constitutional right to marry and various state tort claims. After discovery, defendants successfully moved for summary judgment in the district court. Finding this case indistinguishable from Waters v. Gaston County, 57 F.3d 422 (4th Cir. 1995), where we upheld a similar anti-nepotism policy under rational basis review, we affirm the district court's grant of summary judgment for defendants.

I.

WCDSS is a governmental division of the County of Wilson, North Carolina. WCDSS maintains an anti-nepotism policy, entitled "Statement of Relatives' Employment." The policy prohibits "[t]wo members of an immediate family" from being "employed within the same

department/agency." J.A. 196. It defines "immediate family" to include a mother-in-law and daughter-in-law. The WCDSS policy is authorized by the North Carolina Administrative Code, 25 NCAC 01I.1701-1702, which is in turn authorized by North Carolina statute, N.C.G.S. § 126-1, et seq.

The anti-nepotism policy has been consistently enforced at WCDSS over a number of years. It was created in 1985, and James Glenn Osborne, Jr., the current director of WCDSS, kept the policy in place when he became director in 1994. Director Osborne maintained the policy because he believed it was in the best interest of the citizens of Wilson County. He thought it prevented violations of confidentiality, prevented the public appearance of unfair hiring and promotion practices, avoided domestic disputes in the workplace, and limited potential conflicts of interest.

Of the other two known incidents of WCDSS employees violating the policy, one of the two employees voluntarily resigned to ensure compliance. There is no instance where two employees violated the policy and thereafter both were allowed to remain at WCDSS.

Plaintiff Woodard began working for WCDSS in August 2001 as a Child Protective Services Social Worker. Prior to being hired, Woodard was made aware of the anti-nepotism policy and acknowledged the Statement of Relatives' Employment with her signature. Judy Vaughn, Woodard's current mother-in-law, has worked as a day porter at WCDSS since August 15, 1994. Neither woman supervised the other, although Vaughn was in charge of cleaning Woodard's office, and the two would occasionally cross paths at work.

Woodard met Vaughn's son at a restaurant in Wilson County, and the two started to date in March 2003. They became engaged on May 1, 2005. After a series of meetings with supervisors, human resource employees, and Director Osborne, Woodard was informed that no exception to the anti-nepotism policy would be made. Director Osborne gave Woodard an opportunity to resign and offered to make a favorable recommendation for employment with nearby counties.

Woodard married Vaughn's son on July 15, 2006. This made Woodard a daughter-in-law to Vaughn and Vaughn a mother-in-law to Woodard, thus causing both to violate WCDSS's anti-nepotism policy. After confirming that Woodard had married Vaughn's son and would not resign, Director Osborne dismissed Woodard from WCDSS on July 25, 2006.

On August 3, 2006, Director Osborne memorialized the decision in a letter to Woodard, explaining that Woodard was dismissed, rather than Vaughn, because Woodard initiated the action that caused both her and Vaughn to violate WCDSS's anti-nepotism policy.

On December 5, 2006, Woodard filed a complaint against WCDSS and the County of Wilson in the General Court of Justice, Superior Court Division, for the County of Wilson, North Carolina. The complaint asserts state and federal constitutional violations and state tort claims for wrongful termination, negligent infliction of emotional distress, and intentional infliction of emotional distress. Defendants removed the action to the Eastern District of North Carolina on January 5, 2007. The district court granted defendants'

summary judgment motion on November 13, 2008, and Woodard now appeals.

II.

"We review the district court's grant of summary judgment de novo, viewing all facts and inferences in the light most favorable" to Woodard. Food Lion, Inc. v. S.L. Nusbaum Ins. Agency, Inc., 202 F.3d 223, 227 (4th Cir. 2000). Summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

Woodard argues that WCDSS's anti-nepotism policy violates her fundamental right to marry under the Fourteenth Amendment to the United States Constitution and Article I, Section 19 of the North Carolina Constitution. The North Carolina Supreme Court interprets these two constitutional provisions

conterminously. See Tri-County Paving, Inc. v. Ashe County, 281 F.3d 430, 435 n.6 (4th Cir. 2002). The alleged constitutional violations undergird Woodard's state tort claims for wrongful termination, negligent infliction of emotional distress, and intentional infliction of emotional distress.

"It is well-settled law that the Constitution embraces a fundamental right to marry" and that this right is "recognized as a basic tenet of substantive due process." Waters v. Gaston County, 57 F.3d 422, 425 (4th Cir. 1995). However, "not every restriction on the right to marry violate[s] the Constitution; rather, 'reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed.'" Id. (quoting Zablocki v. Redhail, 434 U.S 374, 386 (1978)). Therefore, strict scrutiny applies

"only to regulations that 'significantly interfere' with the right to marry." Id. (quoting Zablocki, 434 U.S. at 388). If the anti-nepotism policy does not significantly interfere with the right to marry, then we will "facially review [it] to determine whether there was a rational basis for its passage." Id. at 426.

In Waters we held that the anti-nepotism policy for Gaston County, North Carolina, did not significantly interfere with the right to marry. Id. Gaston County's policy did not allow spouses to be employed in the same department. In the event two employees within the same department married, each was given 90 days to obtain a transfer to another department. If a transfer was not available, the policy described neutral methods for determining which employee would be terminated. Id. at 424 n.1. We found that this anti-nepotism policy "may [have]

touch[ed] upon the marriage relationship" but did "not directly and substantially interfere with that right by preventing those who wish[ed] to marry from doing so." Id. at 426 (quotations omitted). "At most," we explained, "it [wa]s an unwelcome hurdle, forcing one spouse to attempt to transfer to another department within the County or to leave the County's employ altogether." Id.

Waters stands for the general proposition that anti-nepotism policies do not significantly interfere with the right to marry and should be reviewed under the rational basis standard. In an attempt to distinguish Waters, Woodard argues that strict scrutiny should apply to WCDSS's anti-nepotism policy because WCDSS restricts not only married partners from working together but also immediate family members. Although the WCDSS policy covers

more family members than the policy in Waters, the reasoning in Waters does not depend on the number of people affected by the policy. Like the policy in Waters, the WCDSS policy does "not directly and substantially interfere with [the] right [to marry] by preventing those who wish to marry from doing so." Id. (quotations omitted). Indeed, Woodard was able to marry Vaughn's son. "At most," the WCDSS policy "is an unwelcome hurdle, forcing" Woodard to attempt to find a position outside WCDSS "or to leave the County's employ altogether." Id. This hurdle does not restrict marriage; instead, it "is a work-related restriction with incidental effects on [Woodard's] marriage." Id.

The remaining differences between the policy here and that in Waters are not material to Woodard's claim. Woodard points out that the

WCDSS anti-nepotism policy, unlike that in Waters, does not explicitly provide an opportunity to apply for a transfer, nor does it contain a neutral process to determine which employee will be terminated. These differences are, at most, relevant to whether the procedure for firing Woodard was constitutionally sufficient and do not touch on the substantive right to marry. Because Woodard has not pursued a claim of inadequate process, we need not consider these differences further.

Finding Waters indistinguishable, we hold that the WCDSS anti-nepotism policy "does not significantly interfere with the fundamental right of marriage." Id. Thus, "we facially review [it] to determine whether there was a rational basis for its passage." Id. Director Osborne explained that he retained the policy because it "serves a number of

proactive, preventive measures." J.A. 191. Among those articulated by Director Osborne are "rational and laudable workplace goals" that we approved of in Waters, such as "reducing favoritism or 9 Woodard's state law tort claims likewise fail for the same reason.

III.

For the foregoing reasons, the judgment of the district court is

AFFIRMED

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* Woodard argues that the WCDSS anti-nepotism policy is not narrowly drawn because it is more restrictive than the County of Wilson anti-nepotism policy As discussed, the WCDSS policy is authorized by North Carolina law, and WCDSS may choose an anti-nepotism policy that is more restrictive than the County of Wilson policy so long as it has a rational basis